IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13411 of 2005
With
SPECIAL CIVIL APPLICATION No. 13413 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SONALBEN KANUBVHAI VAGHANI & 1 - Petitioner(s)
Versus
BARODA MERCANTILE CO OP BANK LTD. THRO.GENERAL MANAGER - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 - 2.MRS RANJAN B PATEL for Petitioner(s) : 1 - 2.
MR YATIN SONI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/06/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri Yatin Soni waives service of notice of rule on behalf of the

respondent in both the petitions.

2. The petitioners herein were facing summary suits filed by the respondent Bank before the Board of Nominees. It appears that the case of the Bank was that at one stage both the summary suits were awarded in favour of the Bank in absence of the petitioners. However, subsequently the petitioners appeared through an application dated 22nd January 2004. This application was not served on the respondent nor the respondent was heard before the Board of Nominees passed the order on the same day recalling the order already passed since the same was not yet signed and permitted the petitioners to resist the suits. Ultimately, the Board of Nominees passed order on 26th July 2004 permitting the petitioners to defend the suits unconditionally. The Bank preferred a revision application against the said order before the Cooperative Tribunal. The Tribunal by its impugned order dated 29.4.2005 granted conditional leave to defend the suits on the condition that the petitioners deposit 33 per cent of the suit amounts with the Bank before 22nd June 2005. The petitioners are aggrieved by the said order passed by the Tribunal in the Revision Application filed by the respondent Bank.

3. I have heard the learned advocates appearing for

the parties and perused the material on record.

4. It is not in dispute that at one stage the Board of Nominees had passed order allowing the summary suits filed by the respondent Bank. This was in absence of the petitioners or their advocates. The petitioners, therefore, filed an application on 22.1.2004 and requested that they be permitted to defend the suits. This application was accepted by the Board of Nominees on the very same day. I have no hesitation in recording that the copy of the application of the petitioners was not served to the respondent Bank nor was the respondent Bank heard before the Board of Nominees passed its order thereon. Thus, by an ex parte action, the Board of Nominees recalled its earlier order already passed in favour of the Bank. This was most inappropriate and totally impermissible under the law. For whatever valid reasons if the petitioners had any right to seek recalling of the order already passed, at least the Bank in whose favour such an order was passed had a right to be heard. Under the circumstances, the Board of Nominees could not have allowed the application of the petitioners without putting the Bank to notice. On this short ground alone, the order passed by the Board of Nominees subsequently on 26th July 2004 granting unconditional leave to the petitioners to defend the suits

deserves to be quashed.

5. The question, however, is as to what would be the appropriate condition to permit the petitioners to defend the suits. In this regard, the Tribunal though has imposed the condition of deposit of 33 per cent of the suit amounts, I find no reasons in the impugned order to justify such a figure. It is true that the petitioners are facing summary suits claiming substantial amount of money from them. That by itself, however, cannot be a ground for imposing the condition of deposit 33 per cent of the suit amount.

6. I find that the best course open would to request the Board of Nominees to decide the question afresh after hearing both the sides. This, however, cannot be done unconditionally. The petitioners shall deposit with the Bank a sum of Rs.4 lacs in summary suit from which Special Civil Application No.13411 of 2005 had arisen and Rs.2 lacs in summary suit relating to Special Civil Application No.13413 of 2005 considering the respective claims of the Bank against the petitioners. These deposits shall be made within a period of four months from today. Upon receipt of the said amount with the Bank and after verifying the same, the Board of Nominees shall hear the parties on the application of the petitioners to permit them to defend summary suits.

I have expressed no opinion on merits or demerits of the rival contentions in this regard. For the above purpose, the order passed by the Cooperative Tribunal which is impugned in the present petition as well as one passed by the Board of Nominees on 26th July 2004 are quashed. In case the petitioners fail to deposit the amount as directed above, it will be open for the Board of Nominees to pass appropriate order for the summary suits as if the petitioners have not been given permission to leave to defend the suits. With these directions, the petitions are disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)